



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/170962

PRELIMINARY RECITALS

Pursuant to a petition filed December 27, 2015, under Wis. Stat., §49.45(5), to review a decision by the Dodge County Dept. of Human Services to deny Medical Assistance (MA), a hearing was held on February 10, 2016, at Madison, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether the county correctly denied nursing home MA because petitioner's wife did not cooperate with the application.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Dodge County Dept. of Human Services
143 E. Center Street
Juneau, WI 53039-1371

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County.
2. Petitioner applied for nursing home MA on November 10, 2015, seeking a backdate to August 7, 2015. By a notice dated December 22, 2015, the county denied the application because petitioner's spouse's information and signature were not provided.
3. Petitioner is married but separated from his wife. They separated approximately fifteen years ago and have had little or no contact since then. They did not get divorced because they could not

afford to do so. Petitioner did not know his wife's address when he applied; the nursing home business manager located it using a Google search.

4. Petitioner's wife has no telephone to the best of his knowledge. The business manager sent two letters to petitioner's wife asking her to contact the nursing home to assist with the application, but she did not respond.
5. After the denial the petitioner filed a request for good cause waiver. It was denied because there is no pending discharge from the nursing home.

DISCUSSION

Wis. Stat., §49.455(5)(e) provides:

The department may deny to the institutionalized spouse eligibility for Medical Assistance if, when requested by the department, the institutionalized spouse and the community spouse do not provide the total value of their assets and information on income and resources to the extent required under federal Medicaid law or sign the application for Medical Assistance.

Wis. Admin. Code, §DHS 102.01(7) provides:

When an institutionalized person who is applying for MA or an institutionalized recipient whose eligibility for MA is being redetermined has a community spouse, both the institutionalized spouse and his or her spouse, their authorized representatives or someone acting responsibly for the institutionalized spouse or his or her spouse shall sign the application form. Failure of either spouse or that person's authorized representative or someone acting responsibly on behalf of either spouse to sign the application form shall result in ineligibility for the institutionalized spouse under s. DHS 103.075 [the Spousal Impoverishment provision].

Based on those provisions, the Department amended its MA Handbook, §2.5.3, to provide as follows:

All spousal impoverishment Medicaid applications and reviews require the signatures of both the institutionalized person and the community spouse, or of a person authorized to sign for them.

If the institutionalized person's signature is missing, deny the application.

Beginning with applications dated November 11, 2013, if the community spouse refuses to sign the application, refuses to disclose the value of assets, or refuses to provide required information on income or resources, deny the application unless the agency determines that denial of eligibility would result in undue hardship for the person.

The requirement that the community spouse sign the application and cooperate with the compilation of income and asset information was mandated as part of the State 2013-2105 Budget, Wisconsin Act 20. Prior to the changes, if the community spouse refused to cooperate, the agency treated the MA applicant as a single individual. See BEPS/DFS Operations Memo 13-38, dated November 11, 2013.

Now the only option for a person whose spouse refuses to cooperate is to request a good cause waiver. Good cause can be granted only if the applicant submits a copy of a notification from the nursing home stating a date of involuntary discharge and alternative placement location, or other proof that the person

will be deprived of medical care such that his health or life would be endangered, or deprived of food, clothing, shelter, or other necessities of life. Handbook, §17.17.5.

The county denied the good cause waiver because the nursing home has not issued a notice of discharge. Ms. [REDACTED], the home's business office manager, testified that the home has not issued such a notice because staff is aware that petitioner is incapable of caring for himself; he needs to be in a nursing home.

I conclude that the county correctly denied nursing home MA because petitioner's wife did not cooperate with the application process. However, I conclude also that the good cause waiver should be granted. There is sufficient proof that petitioner would be deprived of necessary care that would endanger his health if he is ineligible for MA and nursing home care was taken away. Included in my determination is the testimony that petitioner's wife likely has few or no assets that would affect eligibility (petitioner testified that he knows only of her home which is abandoned and is a candidate for condemnation). If, for example, it was probable or even possible that the non-cooperative spouse had assets that could pay for the nursing home resident's care, that ability would be a factor in the good cause determination.

The Handbook, §2.5.3 says that the application should be denied unless the denial would result in undue hardship. I conclude that because undue hardship would exist, the application should be processed as if petitioner were a single individual.

CONCLUSIONS OF LAW

Although the county correctly applied the new requirement that a community spouse must sign and cooperate in an application for nursing home MA, petitioner's MA should not be denied based upon a good cause waiver.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to process petitioner's November 10, 2015 MA application as if he were a single individual, and to determine his eligibility. The county should do so within 10 days of this decision subject to necessary delays for verification.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of February, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 17, 2016.

Dodge County Department of Human Services
Division of Health Care Access and Accountability